

SUPPORTING YOUR EMPLOYEES - RIGHT TO DISCONNECT

The Right to Disconnect has been introduced as an amendment to the Fair Work Act via the legislation of the Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024. From 26 August 2024 and onwards (26 August 2025 for small businesses), employees will have the right to not respond to contact from their employer outside of their working hours, unless doing so is unreasonable.

What do I need to do?

- Discuss contact out of hours and set expectations that suit the workplace and the particular role
- Ensure employees know when they can 'switch off' and what they have to do when they are not working

The right does not prohibit employers from contacting their employees, nor does it prevent employees from contacting one another, including across time zones. Rather, the employee will be able to refuse to monitor, read or respond to contact, or attempted contact outside of working hours, when they are not expected to be working or paid to be working, so long as doing so is not unreasonable.

How do I determine if contact outside of hours is reasonable?

Determining what is an “unreasonable refusal” may well be impacted by several factors, including the type of job. An example maybe, an emergency doctor on call, would be required to be contactable at different times of the day, but a retail worker may have clearly designated shifts such as working from 9am to 5pm. According to the Commission’s direction, refusing contact may be “unreasonable” based on (tick all that you are concerned might be unreasonable or where concerns have been raised by employees):

- The reason for out of hours contact
- How the contact is made
- The level of disruption to the employee
- The extent to which the employee is compensated (i.e. by way of an on-call allowance or additional remuneration for working outside normal hours).
- Any non-monetary compensation the employee may receive on top of their wage
- The nature of the employee’s role and responsibilities
- The caring responsibilities of the employee

If you have checked any of the above boxes and are concerned about whether the contact is reasonable contact HR Advice Online to discuss.

What happens if I receive a complaint?

If a dispute arises the employer should first try to come to an agreement with the employee at a workplace level. Where an agreement can’t be made, the matter can be taken to the Fair Work Commission who can enforce ‘stop’ orders.

The Fair Work Commission may reject disputes under certain circumstances, including claims that are deemed “frivolous or vexatious”.

The right to disconnect, and the rules that come into effect on the 26 August 2024 for non-small businesses, and 26 August 2025 for small businesses (businesses that have fewer than 15 employees).